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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

OSHEEN HAGHNAZARIAN et al., Plaintiffs and Appellants, v. CITY OF GLENDALE et al., Defendants and Respondents.	B257501 (Los Angeles County Super. Ct. No. BC495030)

APPEAL from a judgment of the Superior Court of Los Angeles County. Michael L. Stern, Judge. Affirmed.

Osheen Haghnazarian and Hasmik Yaghobyan, in pro. per., for Plaintiffs and Appellants.

Michael J. Garcia, City Attorney, and Miah Yun, Assistant City Attorney, for Defendants and Respondents City of Glendale and Glendale Police Department.

Lonnie Eldridge, City Attorney, David L. Caceres, Assistant City Attorney; Carpenter, Rothans & Dumont, Steven J. Rothans, Jill Williams, and Justin Reade Sarno, for Defendants and Respondents City of Simi Valley and Bryan Samples.

Plaintiffs and appellants Osheen Haghnazarian and Hasmik Yaghobyan challenge the trial court's judgment of dismissal following successful demurrers and motions for summary judgment by defendants and respondents City of Simi Valley, Bryan Samples (Samples; the City of Simi Valley and Samples are collectively referred to as the Simi Valley defendants), City of Glendale, and the Glendale Police Department (the City of Glendale and the Glendale Police Department are collectively referred to as the Glendale defendants).

FACTUAL AND PROCEDURAL BACKGROUND

This lawsuit arises out of the execution of a search warrant. The First Amended Complaint (FAC) alleges four causes of action against respondents: violation of civil rights (42 U.S.C. § 1983); violation of civil rights (*Monell v. New York City Dept. of Social Services* (1978) 436 U.S. 658); false imprisonment; and violation of Civil Code section 52.1 (the Bane Act).

The Glendale defendants demurred to the third and fourth causes of action. The trial court sustained the demurrer without leave to amend and entered judgment in favor of the Glendale defendants. Two months later, the trial court realized that judgment should not have been entered and vacated the judgment.

The Glendale defendants and Simi Valley defendants then separately filed motions for summary judgment/adjudication on the remaining causes of action.

Following numerous ex parte applications for shortened time, plaintiffs filed a motion for leave to file a second amended complaint; that motion was denied.

The trial court granted respondents' motions for summary judgment. Judgment was entered, and on May 12, 2014, notice of entry of judgment was served. On June 2, 2014, plaintiffs filed a notice of intent to file a motion for new trial. That motion was denied.

This timely appeal ensued.

DISCUSSION

After reviewing plaintiffs' briefs, it is virtually impossible to determine what occurred below and what they are challenging on appeal. The major problem is with the opening brief. A cursory review of the opening brief reveals that it does not provide us with the basic information we need to determine what is being challenged.

"'A judgment or order of the lower court is *presumed correct*. All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown. This is not only a general principle of appellate practice but an ingredient of the constitutional doctrine of reversible error.'" (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) Thus, in challenging a judgment, the appellant must raise claims of reversible error or other defect, and "present argument and authority on each point made." (*County of Sacramento v. Lackner* (1979) 97 Cal.App.3d 576, 591; accord, *In re Marriage of Ananeh- Firempong* (1990) 219 Cal.App.3d 272, 278.) "[F]ailure of an appellant in a civil action to articulate any pertinent or intelligible legal argument in an opening brief may, in the discretion of the court, be deemed an abandonment of the appeal justifying dismissal." (*Berger v. Godden* (1985) 163 Cal.App.3d 1113, 1119.)

Plaintiffs have failed to meet their burden on appeal. In particular, their opening brief is largely devoid of record citations. (*Lewis v. County of Sacramento* (2001) 93 Cal.App.4th 107, 116.) And, conspicuously absent from the opening brief is a table of authorities. Appellants largely neglected to cite any supporting legal authorities. "'The reviewing court is not required to make an independent, unassisted study of the record in search of error or grounds to support the judgment. It is entitled to the assistance of counsel [or the litigant if, as here, the litigant chooses to represent himself]. Accordingly every brief should contain a legal argument with citation of authorities on the points made. If none is furnished on a particular point, the court may treat it as waived, and pass it without consideration.' [Citation.] [¶] It is the duty of [appellant], not of the courts, 'by argument and the citation of authorities to show that the claimed error exists.' [Citation.]" (*Sprague v. Equifax, Inc.* (1985) 166 Cal.App.3d 1012, 1050.) Since the

issues as raised in plaintiffs' opening brief are not properly presented or sufficiently developed to be cognizable, we decline to consider them and treat them as waived. (*People v. Stanley* (1995) 10 Cal.4th 764, 793; *People v. Turner* (1994) 8 Cal.4th 137, 214, fn. 19; *In re David L.* (1991) 234 Cal.App.3d 1655, 1661.) Nor does plaintiffs' election to act as their own attorney on appeal entitle them to any leniency as to the rules of practice and procedure; otherwise, ignorance unjustly is rewarded. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984–985; *Lombardi v. Citizens Nat. Trust Etc. Bank* (1955) 137 Cal.App.2d 206, 208–209; *Gamet v. Blanchard* (2001) 91 Cal.App.4th 1276, 1284; *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246–1247.)

Keeping these principles in mind, and ignoring the hyperbole and tone of plaintiffs' opening and reply briefs, we have attempted to address, as best as possible, the merits of the claims that we could discern.

I. *Trial Court's Order Denying Motion for Leave to File Second Amended Complaint*

Plaintiffs contend that the trial court erred in denying their motion for leave to amend and/or file a second amended complaint. We review the trial court's order for abuse of discretion. (*Record v. Reason* (1999) 73 Cal.App.4th 472, 486.)

Regarding the Glendale defendants, it seems that plaintiffs are arguing that they could not have sought to amend their pleading any earlier than they did because the trial court erroneously and prematurely entered judgment against them. They offer no legal authority in support of this proposition; as such, we may treat it as waived. (*Del Real v. City of Riverside* (2002) 95 Cal.App.4th 761, 768.)

Regarding the Simi Valley defendants, it seems that plaintiffs are asserting that the trial court erred in denying their motion pursuant to Code of Civil Procedure section 474 on the grounds that it was untimely. Plaintiffs have not established that they raised this argument below; therefore, it is forfeited on appeal. (*Algeri v. Tonini* (1958) 159 Cal.App.2d 828, 832; *In re Marriage of Broderick* (1989) 209 Cal.App.3d 489, 501.)

II. *Trial Court's Order Sustaining Glendale Defendants' Demurrer to the Third and Fourth Causes of Action in the First Amended Complaint*

Plaintiffs contend that the trial court erred in sustaining the Glendale defendants' demurrer without leave to amend. While the trial court sustained the demurrer to both the third and fourth causes of action, plaintiffs only raise arguments regarding the fourth cause of action (alleged violation of Civ. Code, § 52.1). Thus, plaintiffs have forfeited any challenge to the trial court's order sustaining the demurrer to the third cause of action. (*Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852.)

We review the trial court's order sustaining the demurrer de novo and the trial court's denial of leave to amend for abuse of discretion. (*Payne v. National Collection Systems, Inc.* (2001) 91 Cal.App.4th 1037, 1043–1044.)

To prevail on a cause of action for violation of Civil Code section 52.1, a plaintiff cannot merely show that a defendant violated his rights under state or federal law; a plaintiff must also show that the interference with his rights was accomplished through threats, intimidation, or coercion. (*Venegas v. County of Los Angeles* (2004) 32 Cal.4th 820, 834; *Shoyoye v. County of Los Angeles* (2012) 203 Cal.App.4th 947, 955; *Bender v. County of Los Angeles* (2013) 217 Cal.App.4th 968, 979.)

Here, plaintiffs do not allege threats, intimidation, or coercion beyond the bare conclusory allegations in support of their Bane Act claim. Although police officers with their guns drawn may have appeared to have been threatening and intimidating, this type of threat or intimidation is reasonable and incident to conducting a search of a residence pursuant to a search warrant and the arrest of a suspect. And plaintiffs offer no evidence that indicate that they could make such allegations. It follows that the demurrer to this cause of action was rightly sustained without leave to amend.

III. *Trial Court's Order Denying Plaintiffs' Motion for New Trial*

Plaintiffs contend that the trial court erred in denying their motion for a new trial following the order granting summary judgment.

"The authority of a trial court in this state to grant a new trial is established and circumscribed by statute. [Citation.]" (*Oakland Raiders v. National Football League*

(2007) 41 Cal.4th 624, 633.) Pursuant to Code of Civil Procedure section 659, subdivision (a), a party intending to move for a new trial must file and serve a notice of intention to move for a new trial either "(1) After the decision is rendered and before the entry of judgment" or "(2) Within 15 days of the date of mailing notice of entry of judgment by the clerk of the court pursuant to [Code of Civil Procedure] Section 664.5, or service upon him or her by any party of written notice of entry of judgment, or within 180 days after the entry of judgment, whichever is earliest." The time limit within which a new trial motion must be served and filed is measured by excluding the first day and including the last day unless it is a legal holiday, in which the time is extended until the next court day. (Code Civ. Proc., § 12.) These statutory time periods constitute jurisdictional limitations on the trial court's power to afford this relief. (*Douglas v. Janis* (1974) 43 Cal.App.3d 931, 936.)

Here, judgment was entered on May 8, 2014. Notice of entry of judgment was served on May 12, 2014. Using the time constraints delineated above, plaintiffs had until May 27, 2014, to file and serve their notice of intention to move for a new trial. Because they did not file and serve their notice of intent to move for new trial until June 2, 2014, it was untimely and therefore properly denied.

In their reply brief, plaintiffs claim that their motion was timely because the 15-day period is calculated from the date of receipt of the order of dismissal. That is not what the statute provides, and because plaintiffs offer no legal authority in support of their interpretation, we may treat the issue as waived. (*Mansell v. Board of Administration* (1994) 30 Cal.App.4th 539, 545–546.)

It follows that we need not address plaintiffs' argument that they were entitled to a new trial because they did demonstrate a triable issue of fact.

DISPOSITION

The judgment is affirmed. Respondents are entitled to costs on appeal.

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_____, Acting P. J.
ASHMANN-GERST

We concur:

_____, J.
CHAVEZ

_____, J.
HOFFSTADT